

Appl. No. 10/084,587
Amdt. dated April 27, 2005
Reply to Office Action of March 2, 2005

PATENT

REMARKS/ARGUMENTS

This Amendment is responsive to the Office Action mailed on March 2, 2005.

Prior to this Amendment, claims 1-40 were pending and subject to examination. In this Amendment, no claims are amended and no claims are added. Accordingly, claims 1-40 are pending and subject to examination.

In the Office Action, claims 1-40 are provisionally rejected under the doctrine of obviousness double patenting.

Applicants note this rejection, and request that this rejection be held in abeyance until the claims are otherwise allowable.

Claims 1-15, 17-19, 21-35, and 37-40 are rejected as anticipated under 35 U.S.C. 102(e) by Paulse et al. (U.S. Patent Publication No. 2004/00599530). The cover of Paulse et al. indicates that it has an effective reference date of November 16, 2000, based on the filing date of abandoned U.S. Provisional Application No. 60/249,835. This rejection is traversed.

The Examiner alleges that Paulse et al. is prior art under 35 USC § 102(e). However, it is not. 35 USC § 102(e) states:

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent. (emphasis added.)

Paulse et al. is not prior art under 35 USC § 102(e), since Provisional Application No. 60/249,835 is in the current chain of priority (see page 2 of Applicants' Amendment filed on November 13, 2004). The earliest effective filing date for the present application is November 16, 2000, which is the same as the earliest effective reference date for Paulse et al. Paulse et al. is not prior art since it has the same effective prior art date as the effective filing date of the present application. Put another way, Paulse et al. was not filed "before" the invention thereof by the applicant for patent as required by 35 USC § 102(e). Accordingly, the rejection based on Paulse et al. should be withdrawn.

Appl. No. 10/084,587
Amdt. dated April 27, 2005
Reply to Office Action of March 2, 2005

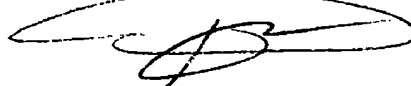
PATENT

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-576-0200.

Respectfully submitted,



Patrick R. Jewik
Reg. No. 40,456

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: 415-576-0200
Fax: 415-576-0300
PRJ:prj
60474636 v1